



## **CITY OF BEAVERTON STAFF REPORT**

**TO:** Planning Commission

**HEARING DATE:** April 15, 2015

**STAFF:** Jana Fox, Associate Planner

**SUBJECT:** **TA2015-0001 (2015 Development Code Omnibus Text Amendment)**

**REQUEST:** The City proposes to amend the Beaverton Development Code to correct minor errors in the text, incorporate Code interpretations, and improve clarity of application processes and development standards. The City also proposes changes to make the Code more internally consistent and easier to understand and apply. The update affects all chapters of the Development Code.

**APPLICANT:** City of Beaverton - Planning Division

**APPLICABLE CRITERIA:** Development Code Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

**HEARING DATE:** Wednesday, April 15, 2015

**RECOMMENDATION:** Staff recommend the Planning Commission review the proposal, take public testimony, deliberate on the proposal and make a recommendation to City Council.

### **1. Summary of Proposed Text Amendment**

City staff have periodically prepared an omnibus text amendment as a housekeeping measure to make corrections, clarifications and updates to the Development Code text. The last omnibus text amendment was proposed in 2011. Exhibit 1 shows the proposed changes, with Exhibit 1.1 containing an index to the proposed changes, Exhibit 1.2 containing the text of the proposed changes, and Exhibit 1.3 is a clean copy of the proposed changes. The staff explanation for the proposed changes that require further explanation can be found in this report. The purpose of these changes is to correct internal inconsistencies, improve readability, update references to other Code sections or regulatory documents, codify prior Planning Director interpretations, and make the Code consistent with changing state or federal regulations.

Most of these changes are self-explanatory, including the grammar and punctuation corrections and the standardization and correction of Ordinance citations within the Development Code. Staff offer additional findings and explanation for some of the proposed changes below. Section numbers correspond to the section numbers in Exhibit 1.2 which outline the proposed amendments.

**Section 1:** This amendment is a further clarification that R1 and R2 setbacks are not eligible for Flexible Setback applications and must go through an Adjustment or Variance to deviate from the requirement. This is already the case but the proposed amendment adds further clarification.

**Section 2:** Allowing attached residential in the R4 zone is consistent with the expressed desires of the Commission when the R3.5 zone was eliminated in 2011 when implementing the 2010 Chapter 20 Update, as the R3.5 zone allowed attached residential.

Community gardens are added as permitted uses in all residential zones in order to be consistent with the Community Health Element of the Comprehensive Plan. This change has also been requested by West Slope NAC members who wish to establish Community Gardens. A definition is included in Chapter 90.

**Section 3:** Removal of use restriction 2 as attached dwellings would be permitted in the R4 zone.

**Section 4:** This amendment is to clarify what is already in place, that drive-up window facilities are permitted in commercial zoning districts. There has been some confusion due to the Chapter 10 provision that states that if a use is listed in one zoning district and not another it is prohibited. Drive-up window facilities are listed in the Multiple Use zoning districts use matrix. It was never intended for drive-up window facilities to be de-facto prohibited in Commercial zones. This was an oversight from the 2010 update to Chapter 20.

**Sections 5, 6, and 7:** As noted in Section 7 of Exhibit 1.2, staff propose to delete the specific NS zoning requirement that commercial uses, excluding food stores, cannot exceed 15,000 square feet. The reason for this use restriction is not clear; however, it is reasonable to conclude that because the NS zone is intended to “provide minimal areas of service and convenience to meet the frequent needs of nearby residents” that the restriction was created to limit the potential impacts associated with larger development on neighboring residential areas. Staff proposes to liberalize the regulation and perhaps encourage new and redevelopment within the NS zones. Rather than prohibit commercial development over 15,000 square feet, staff propose to make requests of developer over 15,000 square feet subject to the approval of a Conditional Use application. Requiring a Conditional Use approval will continue to protect a neighborhood because the project will be subject to a Neighborhood Review Meeting and a public hearing before the Planning Commission. It is also likely that key neighborhood issues such as traffic will be addressed through the submittal of a traffic impact report. The current exemption of food stores from the 15,000 square foot limitation would not be changed. Therefore, food

stores could continue to be over 15,000 square feet without needing Conditional Use approval.

**Section 8:** Printing, Publishing and Book Binding is a use category that is not used in the City of Beaverton and can be covered by other use categories such as manufacturing.

**Section 9:** This amendment is intended to make the use matrix consistent with the use restrictions which conditionally allow or prohibit based either on size or certain sub-uses.

**Section 11:** This amendment requires a Minor Modification of a Conditional Use application for the placement of portable classrooms at elementary, middle or high school campuses. This allows notice to be sent to neighboring property owners which may be affected by the placement of portables. Typically, portable classrooms are larger than 1,000 square feet and have minimal impact to traffic generation. This will provide greater flexibility and timeliness to the public and private school systems to address student capacity needs.

**Section 12:** This amendment exempts Community Gardens from Design Review. The Design Review standards were not intended to cover this type of use and are generally not applicable.

**Section 13:** This threshold modification allows for the removal of any number of landscape trees under a DRCL. The same replanting is required with a DRCL as with a Type 2. There has been minimal public reaction and participation for Type 2 public notices for landscape tree removal. Therefore, staff recommend that staff review and conditioning of replacement tree planting is sufficient for this type of project.

**Section 14:** The removal of threshold 6 and addition of industrial to threshold 5 is intended to reduce redundancy as the thresholds are the same for all zoning district types. The removal of threshold 10 is for consistency with the new DRCL threshold that allows the removal of any number of landscape trees under a DRCL.

**Section 16:** This amendment provides consistency with tree removal for public improvements. Previously only high levels of protected trees (significant trees or significant resource areas) were exempt from Tree Plan applications but now less protected trees such as Community Trees and Landscape Trees.

**Section 17:** The City does not pay application fees for General Fund programs and only the City may initiate a Legislative Zoning Map Amendment per the amendment to the submission requirements so the approval criteria is not needed.

**Section 19:** Makes DLCD notice requirements after a final City decision consistent with DLCD requirements by citing the relevant ORS, this also means that future changes to DLCD rules will not require a code amendment for consistency.

**Section 20:** Roof forms are not applicable to articulation and variety. Roof forms have their own design standards and guidelines which must still be addressed.

**Section 21:** Brings this standard into compliance with the CWS regulations regarding fencing around water quality facilities without increasing the level of review to a Type 3 for compliance.

**Section 22:** This amendment adds parking requirements for Fire Stations, a unique use that was not previously addressed in the Off-Street Parking section of the code. The number used was derived from past application data and analysis.

**Section 23:** This amendment creates consistency with Chapter 90 of the Development Code by using the terms Single Family Attached Dwellings and Multi-Dwelling Structures as the criterion.

**Section 24:** This amendment make the language consistent with other sections of the Code in relation to surplus parking which is parking above the minimum required whereas excess parking is required parking that is not being used by an existing land use.

**Section 26:** After discussions with the City's Structural Engineer staff has learned that WCF towers are not designed to collapse within themselves and the Building Division cannot ask for this type of design, they are limited in scope to what is in the Building Code. Therefore staff is proposing removing the collapse within itself provision and making all WCF's meet the setback requirements of tower height plus five feet from all property lines to ensure towers are not a fall hazard for adjacent properties.

**Section 27:** Adding the ability for land set aside for utility easements to be deducted from acreage when calculating net acreage as utility easements must remain free of structures and are therefore undevelopable.

## **2. Public Comment**

Public notice was provided consistent with Section 50.50 of the Development Code. As of the date of issuance of the staff report and recommendation there were no written comments from the public submitted to the record. Staff have also not received any written comments from Metro or Oregon DLCD staff.

## **3. Facts and Findings**

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA2015-0001 (2015 Development Code Omnibus Text Amendment):

## ***Development Code Approval Criteria***

### ***1. The proposal satisfies the threshold requirements for a Text Amendment application.***

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the Development Code, excluding changes to the zoning map. TA2015-0001 proposes to make changes to each chapter in the Development Code, as shown in Exhibit 1. Therefore, staff find that approval criterion one has been met.

### ***2. All City application fees related to the application under consideration by the decision-making authority have been submitted.***

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Planning Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff find that approval criterion two is not applicable.

### ***3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.***

Metro's Urban Growth Management Functional Plan (UGMFP) is the document that defines how local governments are to implement the Metro Regional Goals and Objectives. The UGMFP is comprised of the following titles:

- Title 1: Requirements for Housing and Employment Accommodations
- Title 2: Regional Parking Policy (Repealed and moved to Title 4 of the Regional Transportation Functional Plan (RTFP))
- Title 3: Water Quality and Flood Management
- Title 4: Industrial and Other Employment Areas
- Title 5: Neighbor Cities and Rural Reserves
- Title 6: Centers, Corridors, Station Communities and Main Streets
- Title 7: Housing Choice
- Title 8: Compliance Procedures
- Title 9: Performance Measures (Repealed)
- Title 10: Functional Plan Definitions
- Title 11: Planning for New Urban Areas
- Title 12: Protection of Residential Neighborhoods
- Title 13: Nature in Neighborhoods
- Title 14: Urban Growth Boundary

The City is required to bring its land use regulations into conformance with the UGMFP. The Development Code has been amended to incorporate several Policies of the UGMFP. This proposed text amendment does not conflict with the UGMFP.

Other than allowing Attached Housing in the R4 zone and allowing Community Gardens in residential zones, no new land uses are proposed. Because the amount of land in the City zoned R4 is relatively small and because no changes are proposed to the base density to be allowed within the R4 zone, staff find that there will be no impact on the City's compliance with Title 1 and the possibility of increased housing choices, in compliance with Title 7. The other changes are basically clarifications or corrections of existing provisions or changes to codify current policy and practice and are not in conflict with the UGMFP.

As part of the City's standard noticing procedures, Metro was sent a copy of the DLCD notice, which contained reference to the draft text and summary of the changes, similar to Exhibit 1.2. Metro staff did not provide any comment in response. Therefore, staff find that approval criterion three has been met.

**4. *The proposed text amendment is consistent with the City's Comprehensive Plan.***

Staff find that the following Comprehensive Plan Policies apply to this proposal:

*4.2.2.1.a Allow a development of a wide variety of housing types in the City.*

Staff find that allowing Attached Housing within the R4 zone increases the variety of housing that can be created, allowing for the potential of medium density attached housing units.

*9.2.2.2.b Ensure regulations and codes are consistent with and complementary to one another, and are easy to understand and implement.*

The express purpose of this Omnibus Text Amendment is to look at the Code as a whole and reduce instances of potential conflict between passages and to improve the degree to which the various Code provisions are consistent with and complementary to one another.

*Community Health Element-Goal Increase access to healthy, fresh, affordable food, especially in underserved neighborhoods.*

*Policy 2. Reduce barriers to siting and support of community gardens on private property, vacant public property, and unused rights-of-ways and increase access to fresh, local agricultural products.*

The inclusion of Community Gardens as a permitted use in Residential zones and exempt from Design Review is implementing this above policy to reduce barriers to siting and supporting Community Gardens.

Comprehensive Plan Compliance Summary: Therefore, staff find that the proposed amendment complies with all applicable Comprehensive Plan policies and is consistent with the City's Comprehensive Plan and that approval criterion four has been met.

**5. *The proposed text amendment is consistent with other provisions within the City's Development Code.***

The vast majority of the proposed changes are designed expressly to make the Development Code more internally consistent and to eliminate or reduce conflict between Code passages. The proposed amendments do not create conflicts with other provisions of the Development Code. Therefore, staff find that the approval criterion has been met.

**6. *The proposed amendment is consistent with all applicable City ordinance requirements and regulations.***

Staff has not identified any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendment. Therefore, staff find that approval criterion six has been met.

**7. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

Staff have determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff find that approval criterion seven has been met.

***Other applicable approval criteria***

As a post-acknowledgement amendment to the City's Development Code, the proposed text amendment is subject to ORS 197.175(1), which requires that the City demonstrate that the proposed text amendment be consistent with the relevant Statewide Planning Goals. Staff have determined that the following goals apply:

Goal 1	Goal 2	Goal 6	Goal 9
Goal 10	Goal 11	Goal 12	Goal 13
Goal 14			

***Goal 1 Citizen Involvement To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.***

Staff find that the City has provided adequate notice and opportunity for public involvement for the proposed text amendment and public hearing.

*Goal 2 Land Use Planning To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

Staff find that the proposed text amendment fits within the established process and framework. Furthermore, the findings contained within this report establish an adequate factual basis for the proposal.

*Goal 6 Air, Water and Land Resources Quality To maintain and improve the quality of air, water and land resources of the state.*

Staff find that the proposal will not have a negative impact on the air, water, or land resources quality of the state.

*Goal 9 Economy of State To diversify and improve the economy of the state*

Staff find that the proposal will not have a negative impact on the economy of the state.

*Goal 10 Housing To provide for the housing needs of the citizens of the state.*

As stated above in response to the Comprehensive Plan Policies relating to housing and Metro Title 1, staff find that the proposal will not negatively impact the ability of the City to meet its share of the housing needs of the citizens of the state.

*Goal 11 Public Facilities and Services To plan and develop a timely, orderly, and efficient arrangement of public facilities and service to serve as a framework for urban and rural development.*

Staff find that the proposal will not impair the City's ability to provide the necessary services.

*Goal 12 Transportation To provide and encourage a safe, convenient and economic transportation system.*

Staff find that the proposal does not, by itself, authorize any additional development and therefore will not have a negative effect on the transportation system of the City or surrounding area. All future development will be reviewed through the existing land use review procedures.

*Goal 13 Energy Conservation To conserve energy.*

Staff find that the proposed changes to the Development Code codify current practices and prior Director's Interpretations and determinations. Therefore, the proposed changes will not change the City's ability to conserve energy or promote energy-efficiency measures.



*Goal 14 Urbanization To provide for an orderly and efficient transition from rural to urban land use.*

Staff find that the proposal only applies to already urbanized land and therefore does not alter the transition from rural to urban land use.

State Land Use Goal Compliance Summary: Therefore, staff find that the proposed text amendment complies with all of the applicable State Planning Goals.

#### **4. Conclusions**

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7.

#### **5. Staff Recommendation(s)**

Staff offers the following recommendation for the conduct of the April 15, 2015 public hearing for TA2015-0001 (2015 Development Code Omnibus Text Amendment):

- A. Conduct the public hearing and receive all public testimony relating to the proposal.
- B. Considering the public testimony and the facts and findings presented in the staff report, deliberate on policy issues and other issues identified by the Commission or the public.
- C. Recommend **APPROVAL** of text amendment application TA2015-0001 (2015 Development Code Omnibus Text Amendment) to the City Council.

#### **6. Exhibits**

- Exhibit 1.1 Index to Proposed Changes
- Exhibit 1.2 Text of the Proposed Changes
- Exhibit 1.3 Clean Copy of Proposed Changes